

Applicants: David J. Pinsky, et al.
Serial No.: 10/692,439
Filed: October 22, 2003
Page 3

REMARKS

Claims 1, 2, 21, 25, 29 and 31 are pending in the subject application. Applicants herein cancel withdrawn claims 1, 2, 21, 29 and 31 without prejudice or disclaimer. Applicants have amended claims 34 and 35 to correct the independent claim upon which they depend. Support for the amendments to claims 34 and 35 can be found in the specification at, *inter alia*, page 17, lines 19-30. Applicants maintain that this Amendment raises no issue of new matter. Therefore, upon entry of this Amendment, claims 25 and 33-35 will be pending and under examination.

Species Election

In the July 25, 2006 Office Action, the Examiner indicated that claims 25, 33 and 35 link inventions VI-XI and that upon allowance of the linking claims, the restriction requirement as to the linked inventions shall be withdrawn and any claims depending from or otherwise requiring all the limitations of the allowable linking claims will be rejoined and examined for patentability. The Examiner further required that applicants elect one of Groups VI to XI in response to the species election.

- VI. Claim 34, drawn to a method for treating reperfusion injury by administering peptides or mutated peptides, classified in Class 514, subclass 2;
- VII. Claim 34, drawn to a method for treating reperfusion injury by administering peptidomimetics, classified in Class 514, subclass 8;

Applicants: David J. Pinsky, et al.
Serial No.: 10/692,439
Filed: October 22, 2003
Page 4

- VIII. Claim 34, drawn to a method for treating reperfusion injury by administering nucleic acids or mutated nucleic acids, classified in Class 514, subclass 44;
- IX. Claim 34, drawn to a method for treating reperfusion injury by administering a small molecule, classified in Class 514, subclass 23;
- X. Claim 34, drawn to a method for treating reperfusion injury by administering muteins, classified in Class 424, subclass 278.1; and
- XI. Claim 34, drawn to a method for treating reperfusion injury by administering antibodies or antibody fragments, classified in Class 424, subclass 133.1.

In response, applicants hereby elect Group VI, i.e., claim 34 drawn to a method for treating reperfusion injury by administering peptides or mutated peptides, with traverse for prosecution at this time. Applicants further note that claim 34 encompasses the elected invention.

Applicants, however, respectfully request that the Examiner reconsider and withdraw the species election.

Under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for election: (1) the invention must be independent and

Applicants: David J. Pinsky, et al.
Serial No.: 10/692,439
Filed: October 22, 2003
Page 5

distinct, and (2) there must be a serious burden on the Examiner if election were not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if election were not required, because a search of the prior art relevant to the species of Group VI would provide the relevant prior art for the species of Groups VII-XI. Specifically, the species of Groups VI-XI all relate to Factor IXa compounds to be used in treating reperfusion injury. Since there is no burden on the Examiner to examine Groups VI-XI together in the same application, the Examiner must examine the entire application on the merits.

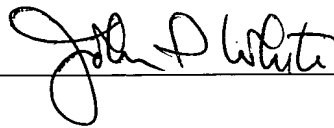
In view of the foregoing, applicants' maintain that election is not proper under 35 U.S.C. §121, and respectfully request that the Examiner reconsider and withdraw the requirement for election.

No fee is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Applicants: David J. Pinsky, et al.
Serial No.: 10/692,439
Filed: October 22, 2003
Page 6

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone them at the number provided below.


Respectfully submitted,



John P. White
Registration No. 28,678
Attorney for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

 8/25/06

John P. White Date
Reg. No. 28,678